STATE OF MICHIGAN

COURT OF APPEALS

In re T. MONTIE, Minor.

UNPUBLISHED
October 20, 2015

No. 326884
Gladwin Circuit Court
Family Division
LC No. 13-000110-NA

Before: M. J. KELLY, P.J., and MURRAY and SHAPIRO, JJ.

PER CURIAM.

Respondent mother appeals as of right from the trial court's order terminating her parental rights to the minor child, TM, pursuant to MCL 712A.19b(3)(c)(*i*) (failure to rectify conditions of adjudication), (g) (failure to provide proper care and custody), (j) (reasonable likelihood that child will be harmed if returned to parent), and (l) (rights terminated to another child). We affirm.

I. FACTS

In December 2013, petitioner sought emergency removal of TM from her father's care based on allegations that the child's father had sexual intercourse with two minors. TM's father had obtained custody of the child earlier in 2013 after she and her half-sibling were removed from respondent's care based on allegations of abuse and neglect against respondent. TM was then removed from her father's care and custody, and both parents were ordered to participate in and benefit from a parent-agency treatment plan.

In July 2014, in response to our Supreme Court's decision in *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014), petitioner filed a supplemental petition alleging, in part, that respondent "has severe emotional needs and cannot provide for the child's needs" and has "no means to support herself and cannot provide stable housing for her children." Respondent admitted to these allegations on October 16, 2014. A parent-agency treatment plan was entered into that required respondent to pursue employment, submit to random drug and alcohol testing, participate in and benefit from counseling, participate in and benefit from services provided by Community Mental Health, apply for social security income, maintain appropriate housing, and attend parenting time. Based on respondent's failure to comply with and benefit from the parent-agency treatment plan, the trial court authorized a petition seeking the termination of respondent's parental rights with respect to TM.

At the termination hearing the foster-care specialist assigned to this case testified that respondent "still has no means to support herself," explaining that she had failed to seek services

at Michigan Works and failed to obtain any employment. He testified that "she still has no stable housing" and explained that the owner of the residence that she claimed to be residing in had indicated that she had, in fact, not resided there for several months. The foster-care specialist testified that although respondent had recently begun participating in counseling on a consistent basis, she had failed to follow through with seeking other services and treatment to address her emotional needs.

Respondent's counselor testified that respondent had consistently attended counseling appointments with her over the year leading up to the termination hearing. She explained that while respondent had "made a lot of progress," she would likely be unable to parent unless "she takes the treatment for PTSD [post-traumatic stress disorder] which she's been reluctant to do."

Respondent admitted that she had not obtained employment. While there was testimony that she was seeking social security income based on an undiagnosed disability, she was unaware of the status of her claim. Respondent testified that she had stable housing despite the fact that, according to the foster-care specialist, the owner of the identified housing indicated that she no longer resided there. Respondent stated that her counseling was "actually going quite well," and denied that she was told to complete any other service or treatment relating to her emotional needs. She also admitted to threatening her foster-care specialist.

II. ANALYSIS

Respondent argues that the trial court erred in concluding that terminating her parental rights was in TM's best interests. We review a trial court's order terminating parental rights under the clearly erroneous standard. MCR 3.977(K); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). "A finding is 'clearly erroneous' when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Riffe*, 147 Mich App 658, 671; 382 NW2d 842 (1985). "To be clearly erroneous, a decision must be more than maybe or probably wrong." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). "When reviewing the trial court's findings of fact, this Court accords deference to the special opportunity of the trial court to judge the credibility of the witnesses" appearing before it. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

Once a statutory ground has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights. MCL 712A.19b(5); MCR 3.977. Whether terminating parental rights is in the best interests of the child must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In determining whether termination is in the child's best interests, the trial court should weigh all available evidence. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). This determination should be made considering a wide variety of factors, such as the bond between the child and the parent, the parent's ability to parent, the child's need for permanency and stability, the advantages of a foster home over the parent's home, the parent's compliance with his or her service plan, the parent's visitation history with the child, the children's well-being, and the possibility of adoption. *Id*. at 713-714.

Although the trial court recognized that "this is a mother who loves her child and a child who loves her mother" and that respondent "has been consistent in attending parenting time," it

nevertheless concluded that termination of her parental rights was in the child's best interests "by at least a preponderance of the evidence, arguably clear and convincing evidence." It found that TM "requires stability and consistency for her own emotional and mental wellbeing and she also requires permanency, something that her mother cannot offer." Additionally, the trial court recognized, TM's current placement with her maternal aunt "has consistently provided more than adequate care for TM, has met TM's basic needs as well as any outstanding needs that she has including counseling . . . ."

The trial court's best-interest conclusion is supported by the record. The evidence established that throughout this case respondent failed to pursue employment services through Michigan Works and failed to obtain any form of employment. While she claims this is due to an undiagnosed disability, she never contacted the SSI attorney that she was referred to. Additionally, despite her assertion to the contrary, the owner of the residence she has identified as hers testified that she had not been living there. Moreover, respondent failed to participate in PTSD treatment to address her emotional needs. While she testified that she was never told doing so was a requirement, other witnesses testified that it was highly recommended and that, without it, she would remain unable to parent TM. This, contrasted with what appears to be a safe and stable environment with the child's maternal aunt, strongly supports the trial court's best-interest determination.

Respondent's assertion that the court failed to consider relative placement is without merit. See *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010); *In re Mays*, 490 Mich 993, 994; 807 NW2d 307 (2012); *In re Olive/Metts Minors*, 297 Mich App 35, 43; 823 NW2d 144 (2012). The court specifically found that TM's "maternal aunt . . . has consistently provided more than adequate care for [TM], has met [TM]'s basic needs as well as any outstanding needs that she has including counseling, as a three year old, for the past trauma that this little girl has gone through. And so the Court finds that there is an advantage . . . that weighs in favor of the foster mother, the maternal aunt in this case." The statutory scheme does not preclude finding that termination is warranted, in part, because a relative of the respondent is providing the requisite care for the child. It only provides that being cared for by relatives *could* weigh against ordering petitioner to begin termination proceedings. This is consistent with the focus of the proceedings on what is best for the child, as evidenced in the statutory directive that a court must affirmatively find that termination is in the best interest of the child, MCL 712A.19b(5).[1]

Respondent raises two constitutional arguments. Respondent first argues that her right to due process was violated because petitioner created the conditions that led to the termination of her parental rights. "The Due Process Clause 'provides heightened protection against

[1] Respondent's assertion that petitioner failed to examine alternatives to termination, "most notably guardianship," is contradicted by the record. A foster-care specialist testified that petitioner "explored guardianship." While it is true, as respondent stresses, that the specialist indicated that guardianship "tends" to be more of an option with older children, he explained that is because it is a "permanency plan."

government interference with certain fundamental rights and liberty interests.' " *In re B & J*, 279 Mich App 12, 22; 756 NW2d 234, quoting *Washington v Glucksberg*, 521 US 702, 720; 117 S Ct 2258; 138 L Ed 2d 772 (1997). "It is undisputed that parents have a fundamental liberty interest in the companionship, care, custody, and management of their children." *In re B & J*, 279 Mich App at 23 (citations omitted). Petitioner cannot seek to terminate parental rights based on grounds that it sets out to create because doing so constitutes a violation of parents' due process rights. *Id*. at 19. Stated differently, "when the state deliberately takes action with the purpose of 'virtually assur[ing] the creation of a ground for termination of parental rights,' and then proceeds to seek termination on that very ground, the state violates the due process rights of the parent." *Id*. at 19-20 (citation omitted).

There is nothing in the record to suggest that petitioner created the conditions that led to the termination of respondent's parental rights. The lower court record, including the testimony presented during the termination hearing, demonstrates that respondent had not addressed her emotional needs, had not sought or obtained employment, did not have stable housing, and without the PTSD treatment, was not in a position to parent the child. Respondent claims that she could have demonstrated an ability to provide proper care and custody had she had unsupervised parenting time. It is unclear, however, how unsupervised parenting time would have led to respondent gaining employment or housing or addressing her emotional needs.

Respondent also argues that her right to due process was violated because her parental rights were terminated pursuant to MCL 712A.19b(3)(c)(*i*) less than 182 days after the entry of the initial dispositional order. While she is correct that her parental rights were terminated before the expiration of the requisite 182-day time period, this error was not "decisive to the outcome." *In re Hildebrant*, 216 Mich App 384, 389; 548 NW2d 715 (1996). Both this Court and the Supreme Court have unequivocally and consistently held that only one statutory ground need be proven to terminate parental rights. *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000); *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). Here, respondent's parental rights were also terminated pursuant to subsections (g), (j), and (l), and these findings are unchallenged.

Affirmed.

/s/ Michael J. Kelly
/s/ Christopher M. Murray
/s/ Douglas B. Shapiro